

Voluntary Corrective Action Agreement
Between
The [Michigan Department of Environmental Quality/United States Environmental
Protection Agency] and
(Company)
For the (Facility)
(MI* 000 000 000)

This Voluntary Corrective Action Agreement (“Agreement”) is established between the [Michigan Department of Environmental Quality (“MDEQ”) / United States Environmental Protection Agency (“U.S. EPA”)] and the (Company Name), collectively referred to as the Parties. **[For MDEQ Agreements only:** The MDEQ enters into this Agreement in furtherance of its statutory and regulatory responsibilities pursuant to Part 111, Hazardous Waste Management (“Part 111”), of the Michigan Natural Resources and the Environmental Protection Act, 1994 PA 451, as amended (“NREPA”), MCL 324.11101 *et seq.*, and other applicable state laws and regulations, including its authority as an authorized state under the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6926.] **[For USEPA Agreements only:** The U.S. EPA enters into this Agreement in furtherance of its statutory and regulatory responsibilities under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901 *et seq.* The U.S. EPA also enters into this agreement to help ensure that RCRA corrective action is applied consistently across the State of Michigan by coordinating with the Michigan Department of Environmental Quality (“MDEQ”) to help assure that activities performed under this Agreement are consistent with the standards and requirements of Part 111, Hazardous Waste Management (“Part 111”), of the Michigan Natural Resources and the Environmental Protection Act, 1994 PA 451, as amended (“NREPA”), MCL 324.11101 *et seq.*, and other applicable state laws and regulations.]

I. STATEMENT OF PURPOSE

1.1 In entering into this Agreement, the mutual objectives of the Parties are:

- a. For (COMPANY) to work independently, voluntarily, and expeditiously to investigate and, as necessary, stabilize and remediate releases of hazardous waste, hazardous constituents*, and hazardous substances at or from the (FACILITY NAME) facility (“the Facility”) that may present an unacceptable risk to human health or the environment. The Facility is located at (STREET ADDRESS), (NAME) Township, (CITY), Michigan. (COMPANY) owns and/or operates the Facility.
- b. For (COMPANY) to perform corrective action in accordance with RCRA, Part 111 and Part 201 of NREPA, Environmental Remediation, (“Part 201”) and to provide all information necessary for the U.S. EPA to make the “Environmental Indicators” demonstrations required by the Government Performance and Results Act for the control of human exposures and migration of contaminated groundwater.
- c. For (COMPANY) to use the protection standards and relevant processes of Part 201 as part of satisfying their corrective action obligations for releases of hazardous waste and hazardous constituents under Part 111 and their remedial obligations for releases of hazardous substances under Part 201.
- d. To facilitate (COMPANY)’s efforts to restore the Facility to beneficial use.

***Footnote: For Interim Status facilities, “hazardous constituents” must be changed to “hazardous waste constituents throughout the document.**

II. DEFINITIONS

- 2.1 Unless otherwise expressly provided herein, the terms used in this Agreement which are defined in Part 111 or RCRA or the regulations promulgated under those statutes will have the definitions given to them in Part 111 or RCRA or in such regulations.
- 2.2 The terms “hazardous substance,” “response activity,” “remedial action plan,” “feasibility study,” “interim response activity,” and “remedial action” shall have the meaning as defined in Part 201.

[For MDEQ Agreements only (Sections 2.3 - 2.4):

- 2.3 “Waste Management Unit” (“WMU”), as used in this Agreement, is equivalent to the term “Solid Waste Management Unit” (“SWMU”) as defined by the U.S. EPA in 61 Federal Register 19442 (May 1, 1996).
- 2.4 “Area of Concern” (“AOC”), as used in this Agreement, means those areas which may not meet the definition of a WMU where hazardous waste, hazardous constituents or hazardous substances may have been released to the environment on a non-routine basis, which may present an unacceptable risk to the public health, safety, welfare, or the environment and are subject to the corrective action requirements of Part 111 and the remediation requirements of Part 201.]

III. BACKGROUND

- 3.1 According to (COMPANY), the Facility has been used for (include a description of the processes and products manufactured). (COMPANY) is in the process of (include a description of stage of demolition, site investigation, and taking remedial actions).

- 3.2 The Facility was given U.S. EPA identification number MI* (000 000 000).
- 3.3 **[USE IF APPROPRIATE]** On (DATE), the U.S. EPA developed a Preliminary Assessment/Visual Site Inspection (“PA/VSI”) Report which identified **[S]**WMUs and AOCs at the Facility that require corrective action.

IV. PROJECT MANAGER

- 4.1 The **[MDEQ/U.S. EPA]** and (COMPANY) will each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Agreement. Each Project Manager will be responsible for overseeing the implementation of this Agreement. To the maximum extent practicable, all communications between (COMPANY) and the **[MDEQ/U.S. EPA]**, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers. The Parties will provide, within 14 days, written notice whenever there is a change of Project Manager.

V. WORK TO BE PERFORMED

- 5.1 (COMPANY) agrees to perform the actions specified in this section in the manner and by the dates specified herein. (COMPANY) will perform corrective action activities, pursuant to this Agreement, in compliance with RCRA, Part 111, and other applicable State and Federal laws and their implementing regulations, and consistent with all relevant MDEQ and U.S. EPA guidance documents as appropriate to the Facility. **[FOR U.S. EPA Agreements only:** To help achieve compliance with Part 201 standards, as required by the MDEQ in its corrective action program, (COMPANY) will prepare the documents required by Part 201 as part of its corrective action activities.]

5.2 Remedial Investigation (RCRA Facility Investigation)

(COMPANY) will complete activities necessary to identify and define the nature and extent of releases of hazardous waste, hazardous constituents, and hazardous substances at or from the Facility. These activities include:

- a. Provide to the **[MDEQ/ U.S. EPA]**, as negotiated or not to exceed 90 days after the effective date of this Agreement, a Current Conditions Report (“CCR”) covering all areas of the Facility. The CCR will include any recent sampling data, a summary of the historic operations and physical setting of the Facility, and a Facility map. The CCR will describe, at a minimum, **[if applicable** - conditions at all Facility locations specified in the PA/VSI and] any known past or present locations of treatment, storage, or disposal of hazardous waste, hazardous constituents, or hazardous substances or newly discovered potential Areas of Concern.

[FOR MDEQ Agreements only (Section b):

- b. Provide to the MDEQ, a Remedial Investigation Work Plan (“RI Work Plan”) to identify the nature and extent of any releases of hazardous waste, hazardous constituents, and hazardous substances at or from the Facility, which may pose an unacceptable risk to human health or the environment.]
- b. (or c.) Provide a Remedial Investigation (“RI”) Report to the **[MDEQ/U.S. EPA]** upon completion of the RI. The RI Report must describe the nature and extent of any releases of hazardous waste, hazardous constituents, or hazardous substances at or from the Facility. The RI Report must also include a copy of the current zoning designation that pertains to the site and the portion of the zoning ordinance that pertains to the zoning designation. If there is a change

in land usage and/or subsequent zoning at this site or any portion of the site, a copy of the change in zoning designation must be submitted to the [MDEQ/U.S. EPA]. The RI Report may be prepared in phases to provide timely support for the demonstrations described in paragraph 5.3 and for the determinations and proposal described in paragraph 5.4. If the RI determines that acceptable risks to human health or the environment are exceeded, (COMPANY) will determine the need for interim response activity, based on a professional evaluation of the data and will notify the [MDEQ/U.S. EPA] of the planned course of action.

5.3 Environmental Indicator Reporting

No later than 90 days prior to the dates indicated below, (COMPANY) must submit an Environmental Indicators Report (including draft EI reporting forms) and perform any other necessary activities, consistent with Part 201 criteria and its Rules, sufficient to permit U.S. EPA to determine that:

- a. By (DATE), all current human exposures to contamination at or from the Facility are under control. That is, for all media known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents or hazardous substances, including those above applicable Part 201 risk-based levels, for which there are complete pathways between the contamination and human receptors, significant or unacceptable exposures do not exist.
- b. By (DATE), migration of contaminated groundwater at or from the Facility is controlled. That is, the migration of all groundwater known or reasonably suspected to be contaminated with hazardous wastes or hazardous constituents or hazardous substances above acceptable levels is controlled to remain within any existing areas of

contamination as defined by monitoring locations designated at the time of the demonstration. In addition, any discharge of groundwater to surface water is either insignificant or shown to be currently acceptable according to an appropriate interim assessment. Monitoring and measurement data must be collected in the future, as necessary, to verify that migration of any contaminated groundwater is controlled.

5.4 Remedial Action Plan (Corrective Measures Proposal)

[For MDEQ Agreements only (Sections 5.4.1-5.4.2):

- 5.4.1 (COMPANY) agrees to submit to the MDEQ for review and approval a Remedial Action Plan (RAP), as set forth in Sections 324.20118, 324.20120a 324.20120b and 324.20120d of the NREPA and the Part 201 Rules, and to protect human health and the environment from all current and future unacceptable risks due to past releases of hazardous waste, hazardous constituents, and hazardous substances at or from the Facility.
- 5.4.2 If it is determined that response activities are necessary at the Facility, (COMPANY) agrees to identify, screen, and evaluate potential response activity alternatives for releases of hazardous waste, hazardous constituents, and hazardous substances at or from the Facility. The RAP must include the selected final response activities with a justification for their selection and a brief summary of other alternatives not selected.]

[For U.S. EPA Agreements only (Sections 5.4.1- 5.4.2):

5.4.1 (COMPANY) agrees to submit to the U.S. EPA for review and approval a Corrective Measures Proposal, outlining corrective measures which protect human health and the environment from all current and future unacceptable risks due to past releases of hazardous waste, hazardous constituents, and hazardous substances at or from the Facility. The Corrective Measures proposal must also demonstrate that the development and implementation of the proposed corrective actions complies with the Remedial Action Plan requirements as set forth in Sections 324.20118, 324.20120a, 324.20120b and 324.20120d of the NREPA and the Part 201 Rules.

5.4.2. (COMPANY) will propose to the U.S. EPA by (DATE), final Corrective Measures necessary to protect human health and the environment from all current and future unacceptable risks due to releases of hazardous waste, hazardous constituents, or hazardous substances at or from the Facility (the “Final Corrective Measures Proposal”). The Final Corrective Measures Proposal will describe all Corrective Measures implemented at the Facility since the effective date of this Agreement. It will also include a description of all other final Corrective Measures evaluated by (COMPANY), a detailed explanation of why the proposed final Corrective Measures were preferred by (COMPANY), and cost estimates for the final Corrective Measures evaluated. The Final Corrective Measures Proposal will also include a detailed schedule to construct and implement the final Corrective Measures and to submit a Final Remedy Construction Completion Report. This schedule will provide that as much of the initial construction work as practicable will be completed within one year after the U.S. EPA selects the final Corrective Measures and that all final Corrective Measures will be

completed within a reasonable period of time to protect human health and the environment.]

- 5.4.3 The **[RAP/Corrective Measures Proposal]** must include any information regarding Interim Response Activities performed prior to the implementation of final response activities.
- 5.4.4 The **[MDEQ/U.S. EPA]** may request supplemental information from (COMPANY) if it determines that the **[RAP/Final Corrective Measures Proposal]** and supporting information do not provide an adequate basis to support the **[final response activities/Corrective Measures]** proposed to meet the requirements. The (COMPANY) will provide such supplemental information in a timely manner as directed in writing by the **[MDEQ/U.S. EPA]**.
- 5.4.5 If ongoing monitoring and/or operation and maintenance are required after construction of the final response activities, (COMPANY) will include a Monitoring and/or Operations and Maintenance (“O&M”) Plan in the **[RAP/Final Corrective Measures Proposal]** for approval by the **[MDEQ/U.S. EPA]**.
- 5.4.6 Any risk assessments conducted by (COMPANY) must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios and be performed in accordance with RCRA and Part 201 and its rules.
- 5.4.7 All sampling and analysis conducted under this Agreement will be performed in accordance with a Quality Assurance Project Plan (“QAPP”) prepared in accordance with the U.S. EPA, Region 5, RCRA Quality Assurance Project Plan

Policy (April 1998) as appropriate for the Facility, and be sufficient to identify, characterize, and delineate the nature and extent of all releases, and determine the need for and design of any corrective actions for the Facility. The **[MDEQ/U.S. EPA]** may audit laboratories selected by (COMPANY) or require (COMPANY) to purchase and have analyzed any Performance Evaluation (“PE”) samples selected by the **[MDEQ/U.S. EPA]**, for compounds of concern. (COMPANY) will notify the **[MDEQ/U.S. EPA]** in writing at least 14 days before beginning each separate phase of field work performed under this Agreement. At the request of the **[MDEQ/U.S. EPA]**, (COMPANY) will provide or allow the **[MDEQ/U.S. EPA]** or its authorized representative to take split or duplicate samples of all samples collected by (COMPANY) under this Agreement.

[For MDEQ Agreements only (Sections 5.4.8 – 5.4.11):

- 5.4.8 The MDEQ agrees to provide the public with an opportunity to review and comment on the proposed RAP.
- 5.4.9 Upon MDEQ approval of the RAP, (COMPANY) agrees to implement the RAP.
- 5.4.10 If the RAP is based on criteria in categories provided for in Section 20120a(1)(b) to (e) of the NREPA, the (COMPANY) agrees to file a Notice of Approved Environmental Remediation (NAER) with the (COUNTY NAME) County Register of Deeds.
- 5.4.11 If the Final Corrective Measures Proposal is based on criteria in categories provided for in Section 20120a(1)(f) to (j) or (2) of the NREPA, (COMPANY) agrees to enter into a legally enforceable agreement with the MDEQ or into an enforceable order with the U.S. EPA.]

[For U.S. EPA Agreements only (Sections 5.4.8 – 5.4.11):

5.4.8 The U.S. EPA will provide the public with an opportunity to review and comment on its proposed final Corrective Measures, including a detailed description and justification for its proposals (the “Statement of Basis”). Following the public comment period, the U.S. EPA will select the final Corrective Measures and provide notification of its decision and rationale in a Final Decision and Response to Comments (the “Final Decision”).

5.4.9 If (COMPANY) agrees with the U.S. EPA’s selection of Final Corrective Measures, (COMPANY) will implement the Final Corrective Measures selected in the U.S. EPA’s Final Decision according to the schedule therein.

5.4.10 If the Final Corrective Measures Proposal is based on criteria in categories provided for in Section 20120a(1)(b) to (e) of the NREPA, the (COMPANY) agrees to file a Notice of Approved Environmental Remediation (NAER) with the (COUNTY NAME) County Register of Deeds.

5.4.11 If the Final Corrective Measures Proposal is based on criteria in categories provided for in Section 20120a(1)(f) to (j) or (2) of the NREPA, (COMPANY) agrees to enter into a legally enforceable agreement with the MDEQ or into an enforceable order with the U.S. EPA.]

5.5 Completion Report

(COMPANY) agrees to submit a final Completion Report documenting that all work performed was completed in accordance with the approved **[RAP/Final Corrective Measures Proposal]**. The Completion Report shall include: (a) documentation of

compliance with the cleanup objectives in the approved **[RAP/Final Corrective Measures Proposal]**; (b) verification of the recording of the NAER or restrictive covenant with the (COUNTY NAME) County Register of Deeds; and (c) documentation that the (COMPANY) has entered into a legally enforceable agreement with the MDEQ or an Order with the U.S. EPA.

5.6 Part 111, Rule 299.9525

If there is a transfer of ownership or operational control of the facility, the (COMPANY) agrees to provide a copy of the Part 111, R 299.9525 notice to potential new owners or operators.

VI. SITE ACCESS

- 6.1 The MDEQ and the U.S. EPA and their agents, employees, and representatives are authorized to enter and freely move about all property at the Facility for the purposes of, but not limited to, interviewing (COMPANY) personnel and contractors; inspection of all records, operating logs, files, photographs, documents, contracts, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Agreement, and provide copies thereof, if requested by the MDEQ or the U.S. EPA; conducting such tests, sampling, or monitoring as the MDEQ or the U.S. EPA or the **[MDEQ/U.S. EPA]** Project Coordinator deem necessary; using a camera, sound recording, or other documentary-type equipment; and verifying the reports and data submitted to the MDEQ or the U.S. EPA by (COMPANY).
- 6.2 Nothing in this Section limits or otherwise affects the MDEQ or the U.S. EPA's right of access and entry pursuant to applicable law, including the NREPA and the RCRA.

VII. REPORTING AND PUBLIC INVOLVEMENT

- 7.1 (COMPANY) agrees to establish a publicly accessible repository for information regarding Facility activities and conduct public outreach and involvement activities, consistent with the RCRA Public Participation Manual, as appropriate for the Facility.
- 7.2 (COMPANY) agrees to provide quarterly progress reports to the [MDEQ/U.S. EPA] Project Manager by the 15th day of the month following each quarter. The report will list the work performed to date, data collected, problems encountered, project schedule, and the percent of the project completed and will attach copies of all data collected during the previous month.
- 7.3 The Parties will communicate frequently and in good faith to assure successful completion of the requirements of this Agreement and will meet on at least a semi-annual basis to discuss the work proposed and performed under this Agreement.

VIII. RECORD PRESERVATION

- 8.1 (COMPANY) will retain, during the pendency of this Agreement and for at least six (6) years after termination of the entire Agreement, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Agreement or to waste disposal activities at the Facility. (COMPANY) will notify the [MDEQ/U.S. EPA] in writing 90 days before destroying any such records, and provide the [MDEQ/U.S. EPA] the opportunity to take possession or obtain copies of any such non-privileged documents. (COMPANY)'s notice will refer to the effective date and name of this Agreement and will be addressed to:

[For MDEQ Agreements only:

Chief, Waste Management Division
Michigan Department of Environmental Quality
P.O. Box 30241
Lansing, MI 48909-7741]

[For U.S. EPA Agreements only:

Project Manager
Waste, Pesticides, & Toxics Division
The United States Environmental Protection Agency, Region 5
777 W. Jackson Blvd (D-8J)
Chicago, IL 60604-3590]

(COMPANY) will promptly provide the [U.S. EPA's/MDEQ's] Project Manager a copy of any such notice.

- 8.2 (COMPANY) further agrees that within 30 days after retaining or employing any agent, consultant, or contractor ("Agents") to carry out the terms of this Agreement, (COMPANY) will enter into an agreement with the Agents to provide (COMPANY) a copy of all data and final non-privileged documents produced under this Agreement.
- 8.3 (COMPANY) agrees that it will not assert any claim of privilege for any data developed to prepare any reports or conduct any investigations or other actions taken under the Agreement.

IX. MODIFICATION, TERMINATION, AND SATISFACTION

- 9.1 This Agreement may be modified by written, mutual agreement of the Parties. Except for the dates established in subparagraph 5.3.1, the Project Managers may agree in writing to extend any deadline in this Agreement.

- 9.2 Either Party may unilaterally terminate this Agreement upon written notice to the other Party.
- 9.3 After completion of and based on the results of the final Completion Report and other relevant information, (COMPANY) may submit a written request to the **[MDEQ/U.S. EPA]** if (COMPANY) wishes to terminate corrective action for the Facility or a portion of the Facility. (COMPANY) must demonstrate that there have been no releases of hazardous waste, hazardous constituents, or hazardous substances at or from the Facility or portion of the Facility or that the Facility or portion of the Facility has been remediated to applicable generic cleanup standards and, therefore, poses no threat to public health, safety, welfare, or the environment.
- 9.4 The provisions of this Agreement will be satisfied when the (COMPANY) has achieved the corrective action cleanup objectives and this Agreement will terminate upon (COMPANY)'s and the **[MDEQ/U.S. EPA]**'s execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights" ("Acknowledgment"). (COMPANY)'s execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary land or resource use restrictions, perform operation and maintenance and long-term monitoring activities, establish and maintain financial assurance and permanent markers or other long-term measures, and to recognize the Parties' reservation of rights as required in Section X.
- 9.5 A determination to terminate corrective action shall not preclude the **[MDEQ/U.S. EPA]** from requiring further corrective action at a later date if new information or subsequent analysis indicates that a release or threat of a release of a hazardous waste, hazardous constituents, or hazardous substance at or from the Facility exists which may pose a threat

to the public health, safety, welfare, or the environment, or if there is a change in the use of any portion of the Facility such that the Part 201 cleanup criteria upon which the corrective action is based are no longer applicable.

[For U.S. EPA Agreements only (Sections 9.6 – 9.7):

- 9.6 If a legally enforceable agreement has been entered into between the MDEQ and the (COMPANY) to implement and maintain institutional controls and operation and maintenance of the remedial actions in the RAP, the U.S. EPA will terminate its Voluntary Corrective Action Agreement with (COMPANY).
- 9.7 Nothing in this Agreement constitutes a commitment or requirement that the U.S. EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.]

X. RESERVATION OF RIGHTS

- 10.1 The Parties reserve any and all rights, remedies, authorities, or defenses that they respectively have under law. Nothing in this Agreement limits or affects the authority or ability of either Party to take any action authorized by law. Nothing in this Agreement creates any legal rights, claims, or defenses in either Party or by or for any Third Party. Nothing in this Agreement relieves (COMPANY) from complying with applicable federal, state, and local laws.
- 10.2 This Agreement does not limit or affect the rights of the Parties against any Third Party, nor does it limit the rights of Third Parties.

XI. EFFECTIVE DATE

This Agreement is effective on the date the last Party signs.

DATE: _____

BY: _____
***, President**
(Company)

[For MDEQ Agreements only:

DATE: _____

BY: _____
Jim Sygo, Chief
Waste Management Division
Michigan Department of Environmental
Quality]

[For U.S. EPA Agreements only:

DATE: _____

BY: _____
Robert Springer, Director
Waste, Pesticides, & Toxics Division
United States Environmental Protection
Agency, Region 5]